IN THE SUPREME COURT OF THE STATE OF DELAWARE

FRANKLIN J. WRIGHT,	§	
	§	No. 439, 2010
Defendant Below,	§	
Appellant,	§	
	§	Court Below: The Family Court
v.	§	of the State of Delaware,
	§	in and for Sussex County
STATE OF DELAWARE,	§	
	§	Case No. 1003019085
Plaintiff Below,	§	
Appellee.	§	

Submitted: December 1, 2010 Decided: January 6, 2011

Before BERGER, JACOBS and RIDGELY, Justices.

ORDER

This 6th day of January, 2011, on consideration of the briefs of the parties, it appears to the Court that:

- 1) Franklin J. Wright appeals from a Family Court adjudication of delinquency for possession of a firearm by a person prohibited (PFPP). He argues that the conviction should be reversed because it was based on a defective information, and that the trial court abused its discretion by denying his request for a continuance. We find no merit to these arguments, and affirm.
 - 2) On March 25, 2010, Wright was arrested and charged with third degree

conspiracy and receiving stolen property. On April 13, 2010, the State filed an information, which amended the charges to three felonies – second degree conspiracy, receiving a stolen firearm, and PFPP.

- 3) A Public Defender was appointed to represent Wright, but the Public Defender's Office declared a conflict on April 27, 2010. Conflict Counsel also declared a conflict, but represented Wright at his arraignment on April 29, 2010. At the arraignment, trial was scheduled for June 24, 2010. Timothy G. Willard, Esq. was appointed to represent Wright on May 3, 2010. He promptly filed a request for discovery, and the State responded to that request on June 14, 2010. The State's production did not include the taped statements given by Wright and his codefendant. Wright's counsel received those statements two days before trial.
- 4) At some point prior to trial, Tasha Marie Stevens, Esq., an attorney in Willard's office, began working on the case. On the day of trial, Willard was unavailable. Stevens appeared and asked for a continuance. She explained that she had not had a chance to review the recorded statements. The trial court denied her request. After trial, Wright was adjudicated delinquent of possession of a deadly weapon by a person prohibited.
- 5) Wright first argues that the information charging him with PFPP was deficient because it alleges a violation of 11 *Del. C.* §1448(e), the subsection

addressing sentencing, instead of 11 *Del. C.* §1448(b), the subsection defining the crime. The information stated:

COUNT 3 – POSSESSION OF A FIREARM BY A PERSON PROHIBITED – A FELONY – . . .

[FRANKLIN J. WRIGHT], on or about the 25th day of March, 2010, in the County of Sussex, State of Delaware, did, while being a person prohibited, knowingly possess a firearm for no purpose allowed under this statute, in violation of 11 <u>Del. C.</u> §1448(e).

6) In *Malloy v. State*¹, this Court held that the function of an indictment is "to put the accused on full notice of what he is called upon to defend"² The indictment satisfies that requirement if "it contains a plain statement of the elements or essential facts of the crime."³ The information quoted above identifies the crime; states where and when it allegedly occurred; and describes the elements of the crime. Under these circumstances, the fact that it cites to the wrong subsection of the statute does not affect the information's validity.

7) Wright next argues that the trial court abused its discretion in denying his request for a continuance. This claim lacks merit for two reasons. First, Wright requested the continuance as the trial was starting. He received the delayed discovery

¹462 A.2d 1088 (Del. 1983).

 $^{^{2}}Id.$ at 1092.

 $^{^{3}}Ibid.$

that formed the basis for his request two days earlier. If Wright was unable to review

that information prior to trial, he should have contacted the State and the court

immediately. At the very least, Wright should have requested the continuance the

day before trial. As it was, the State had witnesses, including a police officer, in

court, ready to testify. The State also had arranged security for the weapon that was

part of the evidence to be introduced at trial. There simply was no justification for

the extremely tardy motion. We also reject this claim because Wright has not

identified any prejudice resulting from the court's decision to go forward with the

trial.4

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court

is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger

Justice

⁴Secrest v. State, 679 A.2d 59, 66 (Del. 1996).

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